IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.96 OF 2006

Shri Sayed Ismail Sayed Ibrahim Kadiri ..Applicant

Versus

Abdul Rahim Abdul Hamid Kabale & Anr. ..Respondents

Mr.Nitin Jamdar for applicant

Mr.P.A. Pol, APP for State

Mr. C.G.Gavnekar for respondent no.1

CORAM : S.C.DHARMADHIKARI,J.

DATE : 8TH NOVEMBER, 2006

P.C.:

1. This is an application for cancellation of bail.

2. A serious grievance is made by Mr. Jamdar, appearing for the applicant-original complainant that the learned trial judge has enlarged the accused - respondent

no.1 before me on bail by a cryptic order without assigning any reason so also indicating what stage the application was preferred and being granted. In other words, in his submission when the investigation is in progress, the application was made and straightway granted without adverting to the materials that were produced. The application was opposed by the learned APP according to Shri Jamdar, but there are no reasons assigned save and except observing that the respondent no.1 is not the main person/accused.

3. Mr. Gavnekar, for the first respondent states that the order enlarging the first respondent on bail is passed on 19.11.2005. Thereafter, the charge has been framed and the trial has commenced. The prosecution has examined one witness already. At such stage the present application should not be entertained. He submits that the respondent no.1 who is accused no.2 is regularly attending the trial court and abiding by the conditions imposed while enlarging him on bail. He submits that the first respondent would abide by any further condition imposed by this court as well.

4. After perusing the Application with the assistance

of Shri Jamdar so also the copies of the power of attorney and sale deed, in my view, the trial court ought to have given some reasons while enlarging the applicant (1st respondent herein) on bail. The prima facie conclusion recorded by the trial court that 1st respondent is not the main accused is not justified even at that stage. The observation is made without adverting to any materials. Conceding that power to grant bail is discretionary, yet, the said power has to be exercised after following sound legal principles. Be that as it may, only because the applicant (1st respondent herein) has been enlarged on bail on 19.11.2005 and that trial has commenced that I am not entertaining this application.

5. However, it is directed that the 1st respondent shall not leave the limits of concerned police station i.e. Murud Police Station, without prior permission of the trial court. This condition shall be abided by 1st respondent till the trial is concluded. Considering the fact that the trial has commenced, the Civil Judge, Junior Division and J.M.F.C., Murud is directed to expedite the case and conclude the same as expeditiously as possible and in any event by 31.3.2007.

6. It is clarified that breach of any conditions imposed by the trial court so also by this court shall entail in the bail being liable to be cancelled. Application is disposed of.

7. All concerned to act on a copy of this order duly authenticated.

(S.C.Dharmadhikari, J.)